

### **7-1-301 Powers and duties of commissioner -- Rulemaking.**

Without limiting the other powers, duties, and responsibilities specified in this title, the commissioner has the functions, powers, duties, and responsibilities with respect to an institution, person, or business subject to the jurisdiction of the department contained in this title, including the functions, powers, duties, and responsibilities described in Subsections (1) through (15).

- (1) The commissioner may govern the administration and operation of the department.
- (2) The commissioner may supervise the conduct, operation, management, examination, and statements and reports of examinations of financial institutions and other persons subject to the jurisdiction of the department.
- (3)
  - (a) The commissioner may authorize a state chartered depository institution to engage in any activity it could engage in, and to grant to that institution all additional rights, powers, privileges, benefits, or immunities it would possess, if it were chartered under the laws of the United States.
  - (b) The commissioner may authorize a depository institution chartered by this state to engage in any activity that a Utah branch of an out-of-state depository institution of the same class can engage in, and to grant to the Utah institution all additional rights, powers, privileges, benefits, or immunities it needs to engage in the activity.
  - (c) In granting authority under this Subsection (3), the commissioner shall consider:
    - (i) the need for competitive equality between institutions chartered by this state and institutions operating in this state that are chartered by another state or by the federal government; and
    - (ii) the adverse effect on shareholders, members, depositors, and other customers of financial institutions chartered by this state if equal power and protection of those institutions, compared with federally chartered or out-of-state institutions of the same class, are not promptly available.
- (4) The commissioner may safeguard the interest of shareholders, members, depositors, and other customers of institutions and other persons subject to the jurisdiction of the department.
- (5)
  - (a) The commissioner may establish criteria consistent with this title to be applied in granting applications for approval of:
    - (i) a new institution;
    - (ii) a new branch;
    - (iii) the relocation of an office or branch;
    - (iv) a merger;
    - (v) a consolidation;
    - (vi) a change in control of an institution or other person subject to the jurisdiction of the department; and
    - (vii) other applications specified in this title.
  - (b) The criteria established under Subsection (5)(a) may not be applied to make it more difficult for a state chartered institution to obtain approval of an application than for a federally chartered institution in the same class to obtain approval from the appropriate federal regulatory agency or administrator.
- (6)
  - (a) The commissioner may protect the privacy of the records of any institution subject to the jurisdiction of the department pertaining to a particular depositor or other customer of the institution. Rules adopted under this Subsection (6) shall be consistent with federal laws and regulations applicable to the institution.

- (b) An institution that consents to produce records or that is required to produce records in compliance with a subpoena or other order of a court of competent jurisdiction or in compliance with an order obtained pursuant to Sections 7-1-1001 through 7-1-1007 shall be reimbursed for the cost of retrieval and reproduction of the records by the party seeking the information. The commissioner may by rule establish the rates and conditions under which reimbursement is made.

(7)

- (a) The commissioner may classify the records kept by institutions subject to the jurisdiction of the department and to prescribe the period for which each class of records is retained.
- (b) Rules adopted under this Subsection (7) for any class of financial institution shall be consistent with federal laws and regulations applicable to the class.
- (c) Rules made under this Subsection (7) shall provide that:
  - (i) An institution may dispose of any record after retaining it for the period prescribed by the commissioner for retention of records of its class. If an institution disposes of a record after the prescribed period, the institution has no duty to produce it in any action or proceeding and is not liable to any person by reason of that disposition.
  - (ii) An institution may keep records in its custody in the form of microfilm or equivalent reproduction. A reproduction has the same force and effect as the original and shall be admissible into evidence as if it were the original.
- (d) In adopting rules under this Subsection (7), the commissioner shall take into consideration:
  - (i) actions at law and administrative proceedings in which the production of the records might be necessary or desirable;
  - (ii) state and federal statutes of limitation applicable to the actions or proceedings;
  - (iii) the availability from other sources of information contained in these records; and
  - (iv) other matters the commissioner considers pertinent in formulating rules that require institutions to retain their records for as short a period as commensurate with the interest in having the records available of:
    - (A) customers, members, depositors, and shareholders of the institutions; and
    - (B) the people of this state.

(8)

- (a) The commissioner may establish reasonable classes of depository and other financial institutions including separate classes for:
  - (i) banks and related institutions;
  - (ii) credit unions; and
  - (iii) industrial banks.
- (b) If the restrictions or requirements the commissioner imposes are not more stringent than those applicable under federal law or regulation to federally chartered institutions of the same class, the commissioner may establish the following for each class in a manner consistent with this title:
  - (i) eligible classes and types of investments for the deposits and other funds of those financial institutions;
  - (ii) minimum standards, in amounts sufficient to protect depositors and other creditors, for the amount and types of capital required to engage in the business conducted by each class or to obtain a license or to establish a branch or additional office of an institution of each class;
  - (iii) eligible obligations, reserves, and other accounts to be included in the computation of capital;
  - (iv) minimum liquidity requirements for financial institutions within each class in amounts sufficient to meet the demands of depositors and other creditors for liquid funds;

- (v) limitations on the amount and type of borrowings by each class of financial institution in relation to the amount of its capital and the character and condition of its assets and its deposits and other liabilities;
- (vi) limitations on the amount and nature of loans and extensions of credit to a person or related persons by each class of financial institution in relation to the amount of its capital; and
- (vii) limitations on the amount and nature of loans and extensions of credit by a financial institution or other person within each class to an executive officer, director, or principal shareholder of:
  - (A) the institution or other person;
  - (B) a company of which the institution or other person is a subsidiary;
  - (C) a subsidiary of the institution or other person;
  - (D) an affiliate of the institution; and
  - (E) a company controlled by an executive officer, director, or principal shareholder of the institution.
- (9) The commissioner may define unfair trade practices of financial institutions and other persons subject to the jurisdiction of the department and to prohibit or restrict these practices.
- (10) The commissioner may establish reasonable standards to promote the fair and truthful advertising of:
  - (a) services offered by a financial institution;
  - (b) the charges for the services advertised under Subsection (10)(a);
  - (c) the interest or other compensation to be paid on deposits or any debt instrument offered for sale by the institution;
  - (d) the nature and extent of any:
    - (i) insurance on deposits;
    - (ii) savings accounts;
    - (iii) share accounts;
    - (iv) certificates of deposit;
    - (v) time deposit accounts;
    - (vi) NOW accounts;
    - (vii) share draft accounts;
    - (viii) transaction accounts; or
    - (ix) any evidence of indebtedness issued, offered for sale, offered to sell or sold by a financial institution or other person subject to the jurisdiction of the department; and
  - (e) the safety or financial soundness of a financial institution or other person subject to the jurisdiction of the department.
- (11) The commissioner may define what constitutes an impairment of capital for each class of financial institution or other person subject to the jurisdiction of the department.
- (12) The commissioner may designate days on which depository institutions are closed in accordance with Section 7-1-808.
- (13) The commissioner may regulate the issuance, advertising, offer for sale, and sale of a security to the extent authorized by Section 7-1-503.
- (14) The commissioner may require the officers of an institution or other person subject to the commissioner's jurisdiction to open and keep a standard set of books, computer records, or both for the purpose of keeping accurate and convenient records of the transactions and accounts of the institution in a manner to enable the commissioner, supervisors, and department examiners to readily ascertain the institution's true condition. These requirements shall be consistent with generally accepted accounting principles for financial institutions.

(15) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may issue rules consistent with the purposes and provisions of this title, and may revise, amend, or repeal the rules adopted.

Amended by Chapter 73, 2013 General Session